

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185150

DATE: March 2, 1976

MATTER OF: Acoustic Emission Technology Corporation

DIGEST:

1. GAO does not agree that bid offering other than that called for in IFB is for acceptance (in absence of "or equal" clause) notwithstanding that alternate offer is considered to satisfy Government's needs. Hence Army's acceptance of bid offering cassette system in lieu of required paper tape reader was improper.
2. Advanced status of procurement prevents recommendation that requirement under defective award be resolicited.

Acoustic Emission Technology Corporation (Acoustic) protests an award made by the Department of the Army to Dunegan/Endevco, Division of Becton, Dickinson Electronics Company (Dunegan), under invitation for bids (IFB) No. DAAG46-75-B-0034, issued by the Army Materials and Mechanics Research Center, Watertown, Massachusetts, on July 1, 1975, for an "Acoustic Emission Source Location System."

The IFB, as issued, contained the following pertinent specifications for the system:

"* * * The system must satisfy the following major requirements:

* * * * *

"* * * The processed data is presented in real-time.

* * * * *

"The peripheral equipment to include a paper tape reader subsystem and a terminal printer with keyboard and interface.

* * * * *

"Data Processing Section:

* * * * *

"The processing equipment would include the following:

* * * * *

"Paper Tape Reader with interface.

* * * * *

"SYSTEM SOFTWARE

"Three categories of software to be provided:

"Real-time data systems programs.

"These programs control the real time operations * * *."

Acoustic's initial protest pointed out that, although the specifications set forth a list of required data processing equipment for the system, the list did not include any equipment which would satisfy the IFB's requirement that "processed data be presented in real-time." In Acoustic's view, only "visual display" equipment, rather than a "paper-tape" system, would meet the "real-time" requirement. Consequently, and since Dunegan's bid did not offer "visual display" equipment, Acoustic insisted that the protested award was improperly made.

Because of its concern over interpretation of the real-time requirement, Acoustic advised that it had previously "spoke[n] with the technical man at [the Center] * * * and was informed verbally that a visual display was not required." After this conversation, the Center issued an IFB amendment which, in effect, described the "real-time" requirement as a mandatory feature. Because the IFB amendment made the "real-time" requirement mandatory, Acoustic believed it was required, notwithstanding the informal advice to the contrary, to submit a bid based on a system which contained visual display equipment.

Acoustic's and Dunegan's bids contained detailed technical descriptions of the differing proposed systems pursuant to an IFB requirement for descriptive literature. Acoustic termed its description a "response" to the IFB; Dunegan divided its description into two parts--"technical proposals" A and B.

Dunegan's "technical proposal B," which was later accepted, was termed by Dunegan to be "identical in all respects to [its] proposal A" except that Dunegan proposed to supply a printer which included a "dual tape cassette system" in lieu of the "paper tape reader subsystem" set forth in the specifications. Dunegan further stated that the cassette system would "load programs virtually as fast as the paper tape reader" as well as providing a data replay capability which was not present in the required paper tape reader subsystem. Dunegan's bid (\$31,660) for its proposal B was \$410 less than its bid (\$32,070) for proposal A and \$4,425 less than Acoustic's bid of \$36,495 for a system with visual display. Because Dunegan's bid "B" was considered acceptable, notwithstanding its elimination of the required "paper tape reader subsystem," the Center accepted that bid for award.


When Acoustic was furnished a copy of the Army's report, it was apparently made aware for the first time that the Department had made an award to Dunegan for the furnishing of a system that would not contain a "paper tape reader." Acoustic's comment on this fact is quoted as follows:

"After all [the Center] has said about a tape reader being their * * * need they [the Center] deleted it and replaced it with a * * * tape cassette."

We view this comment as the lodging of a separate ground of protest against the Dunegan award.

It is axiomatic that a bid must be rejected as nonresponsive if it takes exception to a material provision of the IFB. 49 Comp. Gen. 553, 556 (1970). As we stated in the cited case: "* * * the test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, * * *." It is the apparent position of the contracting officer that although Dunegan did not offer the exact thing called for in the IFB--namely, the paper tape reader--the Center's needs were satisfied by Dunegan's offer to furnish a cassette system. We do not agree, however, that a

bid which offers other than that called for in the IFB is for acceptance (in the absence of an "or equal" IFB clause) notwithstanding that the alternate bid is considered to satisfy the Government's needs. See 51 Comp. Gen. 518, 522 (1972); Cf. Business Equipment Center, Ltd., B-184583, November 6, 1975, 75-2 CPD 284. Although this defect would ordinarily prompt us to recommend corrective action by way of a resolicitation (51 Comp. Gen., supra), the advanced performance status of Dunegan's contract precludes our making such a recommendation.


Deputy Comptroller General
of the United States